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July 30, 2004

Cathy A. Catterson, Clerk  
United States Court of Appeals  
95 Seventh Street  
San Francisco, CA 94103-1526

Subject: *San Luis Obispo Mothers for Peace v. NRC,*  
*No. 03-74628*

Dear Ms. Catterson,

On behalf of the Petitioners, I am writing in response to a July 19, 2004 letter from Charles E. Mullins, counsel for the U.S. Nuclear Regulatory Commission ("NRC"). Mr. Mullins has forwarded you a copy of the Supreme Court's decision in *Department of Transportation v. Public Citizen*, No. 03-358 (June 7, 2004), which he claims supports the NRC's arguments in this case.

In *Department of Transportation*, the Supreme Court found that the National Environmental Policy Act ("NEPA") did not require the U.S. Federal Motor Carrier Safety Administration ("FMCSA") to examine the increased environmental effects of cross-border operations of Mexican trucks, including increased air pollution, when it issued new safety regulations for the trucks. The Court found that the environmental impacts complained of by the petitioners were proximately caused by a presidential decision to lift a moratorium on the entry of Mexican trucks to the U.S., not by the FMCSA safety regulations. *Id.*, slip op. at 11-13. In addition, the Court emphasized that the FMCSA, whose authority extended only to the regulation of motor carrier safety, had no ability to stop the ingress of Mexican trucks or to impose or enforce emissions controls; thus, no valid purpose was served by preparing an Environmental Impact Statement ("EIS"). *Id.*, slip op. at 4, 12-14.

*Department of Transportation* does not change Petitioners' argument that the environmental impacts of a terrorist attack against the Diablo Canyon Independent Spent Fuel Storage Installation ("ISFSI") would flow directly

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from the challenged licensing and operation of the facility. *See* Petitioners' Reply Brief at 5-12. Moreover, an EIS would serve a useful purpose because the NRC has the statutory authority to deny the issuance of the license or to impose regulatory requirements that would avoid or mitigate the environmental impacts of a terrorist attack on the proposed ISFSI.

Sincerely,



Diane Curran

cc: Service list